IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.16504 of 2006

Dated: December 15, 2006

Between:

G. Ravinder, S/o. Ellaiah, Aged about 40 years, R/o.H.No.1-8-702/33-5, Padma Colony, Near Vegetable market, Nallakunta, Hyderabad.

... Petitioner

And

Dr. B.R. Ambedkar Open University, Prof. G. Ram Reddy Marg, Road No.46, Jubilee Hills, Hyderabad, rep. by its Registrar, and another.

… Respondents

Order:

This Writ Petition has been filed by the petitioner seeking Mandamus, when he was not permitted for interview, held on 08-08-2006, for appointment to the post of Assistant Professor in Political Science.

2. Succinctly, the facts of the case are:

Petitioner, claiming to be belonging to Bestha caste, which is categorized as B.C.'A', had studied Post-graduation in Political Science from Kakatiya University and passed in First Division in the year 1988. He has acquired Bachelor's Degree in Law from the same university in the year 1991 and he is also qualified in the National Eligibility Test (NET) conducted by the A.P. College Service Commission in the year 1993. Thereafter, he has conducted research in 'Development Institutions and Tribal Transformation – A Study' and was conferred Ph.D. by Kakatiya University in the year 1999. The case of the petitioner is that he worked as Lecturer in Priyadarshini Junior College, Hanamkonda, which is affiliated to Kakatiya University, during 1995-1998 and also worked as a Part-time Lecturer in Arts & Science College, Warangal. Later, in the year 1999, he was also made In-charge Coordinator, Regional Center, School of Distance Learning and Continuing Education, Dr. B.R. Ambedkar Degree College, Hyderabad. He got published various research papers numbering about 15, the details of which are not necessary for disposal of this Writ Petition. When there was a vacant post of Assistant Professor in the Political Science Department in the respondent-University, the petitioner was appointed as Academic Consultant in the said vacant post and at that time, his age was 37 years. It is the case of the petitioner that though he was designated as Academic Consultant, the duties that he has been discharging are that of an Assistant Professor. It is stated that though he was initially appointed as Academic Consultant for six months, he is being continued from time to time with short breaks.

3. Pursuant to notification dated 27-05-2005 issued by Dr. B.R. Ambedkar Open University, the respondent herein, inviting applications for appointment to various posts including the post of Assistant Professor

in Political Science, petitioner has applied to the post of Assistant Professor in Political Science, which is reserved for candidates belonging to BC-A. As per the age restriction notified in the said notification,

a candidate shall not be more than 35 years of age as on the date of notification; however age relaxation of five years was given in case of candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes. It was also notified that age restriction will not apply to the employees of the university. It is the case of the petitioner that though he was aged 40 years and 9 months as on the date of notification, he claims that age restriction is not applicable to him as he is already in the employment of the university. Pursuant to his application, initially, he was issued call letter dated 06-05-2006 for the interview scheduled on 15-10-2006, however, on the said date interview could not be held. Further, with reference to the same notification, again interview was scheduled on 08-08-2006, but, however, this time, he was not sent call letter to attend the interview on the ground that he is over-aged than the age that was notified in the notification. At that stage, he approached this court by filing this Writ Petition. This court, taking into account that he has been serving the respondent-university from 2002 and also he was earlier called for interview, granted interim directions to the respondents to consider the case of the petitioner also, along with others, for the post of Assistant Professor in Political Science. Further, it was ordered that result shall not be announced, pending further orders.

4. The case of the petitioner is that though he was aged 40 years and 9 months as on the date of notification, as much as he has been serving the respondent-University and is an employee of the university, age restriction does not apply to him. He has placed reliance on the information brochure issued with reference to subsequent notification

dated 13-12-2006 for some other vacancies of similar nature, wherein it is notified that the applicant should have minimum age of 18 years, however there is no upper age limit.

5. The University has filed counter affidavit, generally, denying the allegations of the petitioner. It is stated in the counter affidavit that since there was shortage of faculty in the Department of Political Science due to ban on recruitment after 1994, services of the petitioner were utilized from 18-02-2002 on consultancy basis for every six months and subsequently with a break of service for every three months. It is stated that petitioner, after being appointed as Academic Consultant, was paid honorarium of Rs.8,000/- per month initially and later it was enhanced to Rs.9,000/- per month and his appointment as Academic Consultant has been extended from time to time. It is further stated that petitioner was advised to work under the supervision of the Head, Department of Political Science. It is averred in the counter affidavit that as the petitioner was over-aged as on the date of notification he was not sent call letter and as he was appointed as Academic Consultant on temporary basis, he cannot be equated with in-service candidates for the purpose of giving benefit of relaxation of age. On the similar lines is also the counter affidavit filed by the impleaded respondent, who was one of the applicants who responded to the aforesaid notification. He avers in his counter affidavit that petitioner is not qualified on account of his being over-aged as on the date of notification.

6. Heard Sri D. Prakash Reddy, learned counsel for the petitioner, Sri M. Ratna Reddy, appearing for the first respondent-university and also Sri V. Venugopala Rao, appearing for the impleaded respondent.

7. Sri D. Prakash Reddy, learned counsel for the petitioner submits

that though the petitioner has been appointed as a temporary Academic Consultant in the year 2002, he has been discharging duties of a regular Assistant Professor as much as regular vacancies were not filled on account of ban imposed by the Government. He further submits that as per the notification, age relaxation is extended to the employees of the university without making any distinction between permanent and temporary employees and as much as the petitioner has been in service of the university for the last more than four years, there is no valid reason for not considering the case of the petitioner at this stage. It is also submitted that the respondent-University itself has issued advertisements for filling up similar such posts of Assistant Professors in other departments and in the information brochure issued in that regard, it is categorically notified that there is no upper age limit for making such appointments. Learned counsel, in support of his arguments, relied on a judgment of the Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi and others**[1]

8. On the other hand, Sri M. Ratna Reddy, learned Standing Counsel appearing for the respondent-University, would submit that age relaxation notified in the said notification is applicable only for the candidates who are in permanent employment of the university; however, the petitioner, who was appointed as an Academic Consultant, temporarily, is not eligible for relaxation of age. It is submitted that petitioner is not eligible to be considered having regard to upper age limit and as he is admittedly above 40 years as on the date of the notification. In support of his arguments, he placed reliance on a judgment of the Supreme Court in the case of **Union Public Service Commission V. Girish Jayanti Lal Vaghela and others**[2].

9. Similarly, Sri V. Venugopala Rao, learned counsel appearing for the impleaded respondent, submits that petitioner is not qualified as much as he was appointed in the university temporarily and not against any regular vacancy in a regular post.

10. In this case, it is not in dispute that petitioner was originally appointed as Academic Consultant and has been discharging duties of an Assistant Professor in the Department of Political Science. In the notification inviting applications, while imposing age restriction, it is clearly notified that upper age limit will not apply to the employees of the university. Though it is open for the respondent-university to restrict such relaxation only to the permanent employees, however, in the notification, it is merely stated that age restriction will not apply to the employees of the university. Petitioner, having been appointed as Academic Consultant in the respondent-university in the year 2002, is undisputedly an employee of the university. If the dictionary meaning of the word 'employee' is taken, it is defined as 'a person employed for wages or salaries'. Hence, any restriction made confining the benefit of age relaxation only to the permanent employees is contrary to the very condition notified in the said notification. Though it is submitted by Sri M. Ratna Reddy, learned counsel for the university, that as much as the petitioner is not a permanent employee of the university, hence he is not entitled for age relaxation, however, it is to be seen that such age relaxation is given to the employees of the university and the same is not confined to the employees working in the permanent cadre. When the petitioner entered into the service in the respondent-university, he was aged 37 years and has been working almost continuously since then. As the petitioner belongs to Backward Classes, in normal course, he is eligible to be considered upto 40 years, but on the date of initial

appointment, he was only 37 years. As much as he crossed 40 years during his service in the university, and further in the notification, age relaxation is given to the employees of the university, there is no valid reason for not considering his case on the ground of age restriction. Further it is also relevant to note that the very same university has issued information brochure in respect of the notification dated 13-10-2006, which reads as under:

> "QUALIFICATIONS FOR THE POST OF ASSISTANT PROFESSOR: (Scale of pay Rs.8000-275-13500) UGC 1996.
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> a.) Good Academic record with atleast 55% of the marks or an equivalent grade of B in the 7 point scale with letter grades O,A,B,C,D,E and F at the Master's Degree Level, in the relevant subject from an Indian University or an equivalent degree from a foreign University.
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> i) **NET / SLET Group-I:** Revised eligibility creiteria prescribed by the UGC vide D.O. No.F.1-1/2002 (PS) Exemp., dated 14-06-2006for appointment of Assistant professor under Group-I.
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> NET shall remain the compulsory requirement for appointment as Lecturer for those with P.G. Degree. However, the candidates having Ph.D. Degree in the concerned subject are exempted for NET for P.G. Level and U.G. Level teaching. The candidates having M. Phil degree in the concerned subject are exempted for NET for UG level teaching only.
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> Age: The minimum age is 18 years and there is no upper age limit for all these posts eligible candidates."

11. The judgment relied on by the learned counsel for the petitioner in *Secretary, State of Karnataka's case* (1 supra) also supports the case of the petitioner to the extent of his claim on account of age relaxation.

12. In the aforesaid judgment, the Honourable Supreme Court, while rejecting the claim for relaxation, permitted the candidates to compete in regular process of selection, waiving the age restriction imposed in the recruitment and gave some weightage for their having been engaged for work in the Department for a significant period of time. In that view of the matter, the aforesaid judgment also supports the case of the petitioner as much as the petitioner has been in the service of the respondent-university for the last more than four years and has been discharging duties as to that of the post that is sought to be filled now by making regular appointments. Though learned Standing Counsel appearing on behalf of the respondent-university relied on a judgment of the Honourable Supreme Court in *Union Public Service Commission's case* (2 supra), it is to be seen that in this case, the respondent-university itself did not apply age restriction to the employees of the university and further for subsequent notifications, upper age restriction itself is waived. Hence, there is no reason to disqualify the petitioner on the ground of crossing the upper age limit.

13. Having regard to the facts and circumstances of the case on hand, coupled with the conditions notified in the notification and the information brochure given by the respondents in the subsequent notification for similar such posts, I dispose of the Writ Petition directing the respondents to consider the case of the petitioner for appointment to the post of Assistant Professor in Political Science pursuant to the notification dated 27-05-2005 issued by the respondent-university along with other eligible candidates, without disqualifying him on the ground of age, subject to his possessing requisite qualifications and basing on his merit and assessment in the interview.

14. The Writ Petition is accordingly disposed of. No order as to costs.

JUSTICE R. SUBHASH REDDY.

December 15, 2006
MRR

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[1] **(2006) 4 SCC 1**
[2] **AIR 2006 SC 1165**